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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,633	07/08/2003	Henk C.A. de Groot	50509/VGG/D214	4872
23363	7590	06/07/2004	EXAMINER	
CHRISTIE, PARKER & HALE, LLP 350 WEST COLORADO BOULEVARD SUITE 500 PASADENA, CA 91105			HAAS, WENDY C	
		ART UNIT	PAPER NUMBER	
		1661		

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/615,633	GROOT, HENK C.A. DE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Wendy C Haas	1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*WC Haas  
Patent Exr  
AV 1061*

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date, _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

**OBJECTION TO THE DISCLOSURE**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

*(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.*

**35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

*The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

*The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.*

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

*The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.*

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

*No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.*

The disclosure is objected to under 37 CFR 1.163 (a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

**More specifically:**

A. Applicant must provide the botanical name (genus and species) of the claimed plant in a separate section at the beginning of the specification in order to comply with 37 CFR 1.163(c)(4). The applicant presently indicates the botanical name is "sp. Rosaceae." Rosaceae is a misspelling of the Family name of the claimed plant. Correction is needed.

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- B. Applicant should provide a more substantive comparison between the claimed plant and the parent cultivars, if possible.
- C. Applicant should specify that the claimed cultivar originated as a single plant.
- D. Applicant should provide the typical environmental conditions the claimed plant was grown under as described in the Detailed Description of the Variety.
- E. Applicant should note whether the plant, as described, was budded on a rootstock (and name the understock, if known) or whether it was grown on its own roots. It would appear from the phrase "grafted cutting" the plant was grown on an unnamed rootstock.
- F. Applicant should carefully read the specification with an eye towards spelling and grammatical errors and correct any errors that are found.
- G. Applicant should describe the overall shape of the sepals of the claimed plant as well as the shape of their margins in botanical terms.
- H. Applicant should provide the typical and observed peduncle diameter.
- I. Applicant should provide the typical and observed flower depth for the flowers of the claimed plant.
- J. Applicant should provide information as to the petal length and width.
- K. Applicant should provide typical and observed petaloid color, texture, length and width.
- L. Applicant should provide the average amount of pollen produced by the claimed plant.
- M. Applicant should describe the pistils by providing a size, shape and a color with reference to the employed color chart.
- N. Applicant should provide the typical and observed rachis length and diameter.
- O. Applicant should provide the stipule shape, stipule margin shape and stipule number.
- P. Applicant should provide the typical and observed length and width of the leaflets of the claimed plant as well as provide the shape of the leaflet base, leaflet apex and a color for the leaf veins.
- Q. Applicant should describe the diameter of the stems (canes) of the claimed plant as well as provide the typical and observed distance between internodes on same.

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R. Applicant should specify the typical and observed number or concentration of thorns on the canes of the claimed plant.

The above listing may not be complete. Applicant should carefully compare the claimed plant with the botanical descriptions set forth in the specification to ensure completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical information should be imported into the specification, as should any additional or corrected information relative to same.

**CLAIM REJECTION**

**35 U.S.C. § 112, 1st and 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for reasons set forth in the Objection to the Disclosure Section above.

**CONCLUSION**

NO CLAIM IS ALLOWED.

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**REFERENCES CITED**

The references cited are believed to disclose the claimed plant, with the exception of the plant patent cited, which is believed to be the closest known patented cultivar.

**FUTURE CORRESPONDENCE**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy C. Haas whose telephone number is (571) 272-0976. The Examiner's is available from 9:30 a.m. to 5:30 p.m., Monday through Friday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The fax number for the group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
W. C. Haas  
Patent Examiner  
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